IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3126 OF 2006

Rajesh Balaram Bhamare Applicant
versus
The State of Maharashtra Respondents

Mr.S.S.Lanke for applicant.
Mr.P.A.Pol, APP for respondents.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 18th September 2006

PC :

1. Heard Shri Lanke for the applicant and learned APP for the State.

2. The applicant is an accused in and arrested in connection with CR No.I-144/2005 which is registered at Shantinagar Police Station, Bhivandi, District Thane.

3. The offences alleged are under section 363, 366-A, 394, 376(2)(g) r/w 34 so also Sections 323, 354 and 384 of IPC..

4. The complainant has lodged this FIR alleging that along with two women he reached Kalyan Station and at Kalyan Station on the relevant date, he was dragged out of the railway platform

along with the women. They were forced into auto rikshaw and thereafter taken to village Ranjnoli. The complainant was beaten. The complainant is related to the victim. The second woman was also related to the complainant but she was spared. After reaching Village Ranjnoli near the burial ground the applicant-accused and co-accused committed rape on the victim one after another. Apart from committing the heinous act, it is alleged that the accused took away some jewellery ornaments from the person of the victim and the other woman. The statements have been recorded. Thereafter, the applicant and another co-accused applied for bail by filing Criminal Bail Application No.924 of 2005. That application was rejected by the learned Trial Judge and he has observed that the victim was a young girl of 20 years. She was working as a Waitress in a restaurant She was known to the applicant prior to the incident. The victim and the complainant had come to Mumbai and were to get employed to meet the expenses of the proposed wedding of the victim. The applicant before me, as also other accused, are having criminal antecedents. The learned Judge has observed that the applicant came to recover certain amounts from the complainant and there is reason to believe that

using their physical power and strength, after over powering the complainant, the accused have committed the aforesaid act. The victim had to meekly surrender to their strength and was thus in helpless situation. Learned Judge rejected the bail application with such findings.

5. Shri Lanke's submission is that the co-accused have been enlarged on bail and therefore, the applicant's application deserves to be granted. He relies upon the principle of parity. However, the learned Judge has assigned reasons by observing that as far as one Ratilal and Vishwanath (co-accused), the victim has not made any reference to them. There is a specific reference to the applicant in the statements which are given by the victim, the complainant and others.

6. The second application for bail was also rejected by the learned Judge by observing that apart from the criminal antecedents there is strong prima facie case against present applicant. There are eye witnesses namely the complainant and the other woman. The facts which are narrated by the complainant as well as two women have been prima facie corroborated by

independent witness Yasir Sardar. Thus, there is strong prima facie case of involvement of the applicant-accused in a gang rape.

7. There are recoveries of gold ornaments at the instance of the applicant as well.

8. In my view, in such circumstances, it is not possible to accept the submissions of Shri Lanke. Additionally, I have satisfied myself about criminal antecedents of the applicant. An affidavit is filed by the Investigating Officer in which details of the cases pending against applicant, have been set out. The applicant was earlier detained under Maharashtra Prevention of Dangerous Activities Act.

9. There is substance in the contentions of learned APP that if the applicant is enlarged on bail, it is quite likely that he would threaten the prosecution witnesses and the victim.

10. For all these reasons this is not a fit case for enlarging the applicant on bail. Criminal Application is accordingly dismissed.

(S.C.DHARMADHIKARI, J.)